

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Sections 122-1 and 122-2.1 as follows:

6 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

7 Sec. 122-1. Petition in the trial court.

8 (a) Any person convicted or adjudicated delinquent of an  
9 offense for which either a sentence of imprisonment was imposed  
10 or another form of detention resulted ~~imprisoned in the~~  
11 ~~penitentiary~~ may institute a proceeding under this Article if  
12 the person asserts that:

13 (1) in the proceedings which resulted in his or her  
14 conviction or delinquency adjudication there was a  
15 substantial denial of his or her rights under the  
16 Constitution of the United States or of the State of  
17 Illinois or both; or

18 (2) ~~the death penalty was imposed and~~ there is newly  
19 discovered evidence ~~not available to the person at the time~~  
20 ~~of the proceeding that resulted in his or her conviction~~  
21 that establishes a substantial basis to believe that the  
22 defendant is actually innocent by clear and convincing  
23 evidence.

1 (a-5) A proceeding under paragraph (2) of subsection (a)  
2 may be commenced within a reasonable period of time after the  
3 person's conviction or delinquency adjudication  
4 notwithstanding any other provisions of this Article. ~~In such a~~  
5 ~~proceeding regarding actual innocence, if the court determines~~  
6 ~~the petition is frivolous or is patently without merit, it~~  
7 ~~shall dismiss the petition in a written order, specifying the~~  
8 ~~findings of fact and conclusions of law it made in reaching its~~  
9 ~~decision. Such order of dismissal is a final judgment and shall~~  
10 ~~be served upon the petitioner by certified mail within 10 days~~  
11 ~~of its entry.~~

12 (b) The proceeding shall be commenced by filing with the  
13 clerk of the court in which the conviction or delinquency  
14 adjudication took place a petition (together with a copy  
15 thereof) verified by affidavit. Petitioner shall also serve  
16 another copy upon the State's Attorney by any of the methods  
17 provided in Rule 7 of the Supreme Court. The clerk shall docket  
18 the petition for consideration by the court pursuant to Section  
19 122-2.1 upon his or her receipt thereof and bring the same  
20 promptly to the attention of the court.

21 (c) ~~Except as otherwise provided in subsection (a-5), if~~  
22 ~~the petitioner is under sentence of death and a petition for~~  
23 ~~writ of certiorari is filed, no proceedings under this Article~~  
24 ~~shall be commenced more than 6 months after the conclusion of~~  
25 ~~proceedings in the United States Supreme Court, unless the~~  
26 ~~petitioner alleges facts showing that the delay was not due to~~

1 ~~his or her culpable negligence. If a petition for certiorari is~~  
2 ~~not filed, no proceedings under this Article shall be commenced~~  
3 ~~more than 6 months from the date for filing a certiorari~~  
4 ~~petition, unless the petitioner alleges facts showing that the~~  
5 ~~delay was not due to his or her culpable negligence.~~

6 Except as otherwise provided in subsection (a-5) ~~When a~~  
7 ~~defendant has a sentence other than death,~~ no proceedings under  
8 this Article shall be commenced more than 6 months after the  
9 conclusion of proceedings in the United States Supreme Court,  
10 unless the petitioner alleges facts showing that the delay was  
11 not due to his or her culpable negligence. If a petition for  
12 certiorari is not filed, no proceedings under this Article  
13 shall be commenced more than 6 months from the date for filing  
14 a certiorari petition, unless the petitioner alleges facts  
15 showing that the delay was not due to his or her culpable  
16 negligence. If a defendant does not file a direct appeal, the  
17 post-conviction petition shall be filed no later than 3 years  
18 from the date of conviction or delinquency adjudication, unless  
19 the petitioner alleges facts showing that the delay was not due  
20 to his or her culpable negligence.

21 This limitation does not apply to a petition advancing a  
22 claim of actual innocence.

23 (d) A person seeking relief by filing a petition under this  
24 Section must specify in the petition or its heading that it is  
25 filed under this Section. A trial court that has received a  
26 petition complaining of a conviction, delinquency

1 adjudication, or sentence that fails to specify in the petition  
2 or its heading that it is filed under this Section need not  
3 evaluate the petition to determine whether it could otherwise  
4 have stated some grounds for relief under this Article.

5 (e) A proceeding under this Article may not be commenced on  
6 behalf of a defendant ~~who has been sentenced to death~~ without  
7 the written consent of the defendant, unless the defendant,  
8 because of a mental or physical condition, is incapable of  
9 asserting his or her own claim.

10 (f) Only one petition may be filed by a petitioner under  
11 this Article without leave of the court. The determination as  
12 to whether to grant leave of court shall be made prior to or  
13 contemporaneously with any order made under paragraph (2) of  
14 subsection (a) or subsection (b) of Section 122-2.1 without  
15 pleadings from the State. Leave of court may be granted ~~only~~ if  
16 a petitioner demonstrates:

17 (1) cause for his or her failure to bring the claim in  
18 his or her initial post-conviction proceedings and  
19 prejudice results from that failure; or

20 (2) that there has been a fundamental miscarriage of  
21 justice.

22 For purposes of this subsection (f):

23 (A) ~~(1)~~ a petitioner demonstrates ~~prisoner shows~~  
24 cause by adequately pleading that ~~identifying~~ an  
25 identified ~~objective~~ factor ~~that~~ impeded his or her  
26 ability to raise a specific claim during his or her

1 initial post-conviction proceedings; ~~and~~

2 (B) ~~(2)~~ a petitioner demonstrates ~~prisoner shows~~  
3 prejudice by adequately pleading ~~demonstrating~~ that  
4 the claim not raised during his or her initial  
5 post-conviction proceedings so infected the trial that  
6 the resulting conviction or sentence violated due  
7 process; and.

8 (C) a petitioner demonstrates a fundamental  
9 miscarriage of justice by adequately pleading that  
10 there is newly discovered evidence that establishes a  
11 substantial basis to believe that the petitioner is  
12 actually innocent by clear and convincing evidence.

13 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
14 93-972, eff. 8-20-04.)

15 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

16 Sec. 122-2.1. (a) Within 90 days after the filing and  
17 docketing of each petition, the court shall examine the ~~such~~  
18 petition and enter an order thereon under ~~pursuant to~~ this  
19 Section.

20 (1) If the petitioner is under sentence of death and is  
21 without counsel and alleges that he is without means to  
22 procure counsel, he shall state whether or not he wishes  
23 counsel to be appointed to represent him. If appointment of  
24 counsel is so requested, the court shall appoint counsel if  
25 satisfied that the petitioner has no means to procure

1 counsel.

2 (2) If ~~the petitioner is sentenced to imprisonment and~~  
3 the court determines the petition is frivolous or is  
4 patently without merit, it shall dismiss the petition in a  
5 written order, specifying the findings of fact and  
6 conclusions of law it made in reaching its decision. This  
7 ~~Such~~ order of dismissal is a final judgment and shall be  
8 served upon the petitioner by certified mail within 10 days  
9 of its entry.

10 (b) If the petition is not dismissed under ~~pursuant to~~ this  
11 Section, the court shall order the petition to be docketed for  
12 further consideration in accordance with Sections 122-4  
13 through 122-6. If the petitioner is under sentence of death,  
14 the court shall order the petition to be docketed for further  
15 consideration and hearing within one year of the filing of the  
16 petition. Continuances may be granted as the court deems  
17 appropriate.

18 (c) In considering a petition under ~~pursuant to~~ this  
19 Section, the court may examine the court file of the proceeding  
20 in which the petitioner was convicted, any action taken by an  
21 appellate court in that ~~such~~ proceeding and any transcripts of  
22 that ~~such~~ proceeding.

23 (Source: P.A. 93-605, eff. 11-19-03.)